IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 146 OF 2005

1. Miss Ankita Subhash Lotlikar, (minor), aged about 16 years through her natural guardian and father Subhash Anant Lotlikar, r/o H.No.T3/A, Wilson Park, Fatorda, Salcete, Goa,

2. Master Malcolm Keith Dias, (minor), aged about 16 years through his natural guardian and father Dr. Steven Alan Dias, r/o S/8, Sapana Paradise, Merceswadi, Tiswadi, Goa,

3. Master Ambesh Vinayak Agni, (minor), aged about 16 years, through natural guardian father Vinayak Anant S. Agni, r/o Yashodhan, Tonca, Miramar, Goa,

4. Miss Dhashmi Subhash Kamat, (minor), aged about 16 years through her natural guardian and father Subhash Kamat, r/o TF/04, Church View building, Fr. Agnelo Road, Panaji, Goa,

5. Master Sanket Rajan Nayak, (minor), aged about 17 years, through his natural guardian and father Rajan N. Naik, r/o House No.392, Jeeven Jyot,

First Floor, Comba- Margao, Goa,

6. Miss Priyanka Paresh Barad, (minor), aged about 17 years, through her natural guardian daughter of Paresh Barad, Housing Board Colony, Margao, Goa,

7. Master Akhil Venktesh Gaitonde, (minor), aged about 16 years, through his natural guardian and father Venktesh U.P. Gaitonde, r/o C1. First Floor, Govardhan Building, Aquem, Margao, Goa,

8. Miss Divya Sanjay Prabhudessai, (minor), aged about 17 years, through her natural guardian and father Sanjay Sriranga Prabhudessai, r/o Ravanfond, Naveli, Salcete, Goa, and

9. Miss Vaibhavi K. Nadkarni, (minor), aged about 16 years, through her natural guardian and father Kishor Vaikunt Nadkarni, r/o Housing Board Colony, Margao, Goa. ... Petitioners.

Versus

1. The State of Goa, through Chief Secretary, Secretariat, Panaji, Goa,

2. The Directorate of Technical

Education through its
Director, Government of
Goa, having office at Alto
Porvorim, Goa, ... Respondents

1. Ms. Uma Sham Kamat, minor
represented by her father and
natural guardian Sham Jagannath
Kamat, Panaji, Goa,

2. Master Dinar Govind
Nasnodkar, (minor), aged 17
years, through his natural
guardian and father
Shri Govind Nasnodkar,
r/o Chimbel, Ribandar, Goa,

3. Master Viraj Narayan Bhatkar,
(minor), aged about 17 years,
through his natural guardian
and father Shri Narayan Bhatkar,
residing opp. Junta House,
Panaji, Goa,

4. Rina Cordeiro, minor by her
next friend & father Cajetan
Cordeiro, C-7, La Marina II,
Near Chapel of Stella Marie,
Miramar, Panaji, Goa,

5. Master Akhil Surendra Shenvi
Kerkar, (minor) , aged about 17
years, through his natural
guardian and father Shri Surendra
Balwant Shenvi Kerkar, r/o
Gulmohar A., Second Floor,
behind Sy. Bank, Caranzalem,
Goa,

6. Master Omkar Jairam Ghodge,

(minor), aged about 17 years through his natural guardian and father Shri Jairam Pandurang Ghodge, r/o 53, Cardoz Apartments, St. Caetano, Merces, Goa,

7. Miss Akshata Pradeep Colvalker, (minor), aged about 17 years, through her natural guardian and father Shri Pradeep Vithal Colvalker, r/o Heera Sadan, near KTC Depo, Alto Porvorim, Bardez, Goa,

8. Master Shriman Dnyaneshwar Pednekar, (minor), aged about 17 years, through his natural guardian and father Shri Dnyaneshwar Pundalik Pednekar, r/o Viyaj Nagar, Alto Porvorim, Goa,

9. Master Pritesh Prakash Rane, (minor), aged about 17 years, through his natural guardian and father Shri Prakash Rane, r/o B3-9, Chamuunda Apartments, St. Cruz, Goa,

10. Master Rohan Ramesh Kamat, (minor), aged about 17 years, through his natural guardian and father Shri Ramesh A. Kamat, r/o Mary's Colony, Miramar, Panaji, Goa,

11. Master Anish Sanjeev Juwarkar, (minor), aged about 17 years, through his natural guardian

and father Shri Sanjeev J. Juwarkar, r/o Kamat Kinara, Miramar, Panaji, Goa,

12. Master Param Kamat, (minor), aged about 17 years, through his natural guardian and father Shri Dr. Pradeep Kamat, residing near Panchayat, Assagao, Bardez, Goa,

13. Master Rudresh Vishwanath Bandodkar, (minor), aged about 17 years, through his natural guardian and father Shri Vishwanath Bandodkar, r/o House No.1020/9, Opp. Viva Goa, Candolim, Bardez, Goa,

14. Master Saurav Mohandas Kamat, (minor), aged about 17 years, through his natural guardian and father Dr. Mohandas Kamat, r/o House No.169, B/7, Shantinagar, Ponda, Goa,

15. Master Gaurav Girish Chimulkar, (minor), through his natural guardian and father Mr. Girish Chimulkar, r/o Ponda, Goa,

16. Master Shridhar Ranganath Shenvi Usgaokar, (minor), aged about 17 years, through his natural guardian and father Ranganath Shenvi Usgaokar, r/o Khadpaband, Ponda, Goa, and

17. Mr. Sahun Max Mergulhao, through his natural guardian

and father Mr. Americo Mergulhao,
r/o S-1, Excel-Elite,
Caranzalem, Goa. ...Intervenors.

Mr. A.N.S. Nadkarni, with Mr. H. D. Naik and Mr. N. Takkekar, advocates for the petitioners.

Mr. M. B. D'Costa, Advocate General with Mr. J. A. Lobo, Addl. Government Advocate, for the respondent nos.1 and 2, later on as Amicus Curiae.

Mr. S. S. Kantak, Advocate General with Mr. S. Vahidulla, Addl. Government Advocate for the respondent nos.1 and 2.

Mr. S. K. Kakodkar, Senior Advocate with Mr. J. J. D'Souza, advocate for the intervenor no.1.

Mr. M. S. Sonak, and Ms. P. Bharne, advocates for intervenors no.2, 3, and 5 to 16.

Mr. A. F. Diniz, advocate for intervenor no.4.

Mr. J. Godinho, advocate for intervenor no.17.

CORAM : **S. S. PARKAR &**
V. M. KANADE, JJ.

DATE : **27th June, 2005**
28th June, 2005

ORAL JUDGMENT (Per Parkar, J.)

Like previous years, this year also the admission to professional courses has given rise to one more petition in this Court. This time, it is not regarding the holding of Goa Common Entrance Test ("GCET" for short), but with regard to

the weightage to be given to the result of the GCET. Only last year in this Court a petition was filed challenging the holding of GCET for admission to professional courses on the ground that announcement for holding the GCET was made belatedly and, therefore, a sort of consent order was obtained from this Court on 28th June, 2004, by way of interim relief restraining the State from holding GCET for the last academic year only, on the ground that adequate notice was not given for holding of the GCET. Accordingly, this year the Government had issued Circular in the form of advertisement dated 12th January, 2005, giving the dates for holding of the GCET for admission to various professional courses like MBBS, BDS, BE, B. Arch. and B. Pharm. for the academic year 2005-2006. In that Circular it was indicated that merit list for admission to the various professional courses would be given by preparing a merit list by giving 75% weightage to the marks obtained in the qualifying examination and 25% weightage would be given to the marks obtained in GCET. Thereafter, one more Circular dated 17th March, 2005, was issued making a variation in the dates of the test for different subjects. Then the Government issued the impugned Circular dated 4th April, 2005,

Exh.`C' to the petition, in which it was stated that the Government had no alternative but to assign 100% weightage to the marks scored in the relevant subjects of Goa Common Entrance Test 2005 for preparing the merit list for admission to various professional degree courses mentioned above. It is this Circular which is under challenge in this petition filed under Article 226 of the Constitution of India, by a group of 9 students, through their guardians, who have appeared both for the qualifying examination of the Higher Secondary School Certificate as well as for the GCET. The said Circular is challenged mainly on the ground that the decision of the Government to conduct the Common Entrance Test with 100% weightage at short notice of less than one month was contrary to the earlier notice dated 12th January, 2005, and is, therefore, arbitrary, illegal and bad in law and in contravention of the judgment of the Division Bench of this Court in the case of ***Master Vasudeo @ Amey Subhashchandra Kamat vs. State of Goa & Ors.,*** (AIR 1997 Bom.114). There are other grounds also taken in the petition, which were also pressed at the time of the hearing of the petition, namely that the Government's reliance on the decision of the Apex Court in the case of ***Mridul Dhar (minor) & Anr. vs.***

Union of India & Ors., (AIR 2005 SC 666), is not correct and, therefore, there was non-application of mind on the part of the Government and in the State of Goa where there is only one Board conducting Higher Secondary School Examinations where almost 98% students appear, there is no necessity for holding GCET for giving admission to the professional courses.

2. It is not in dispute that so far as this State is concerned, holding of GCET for the purpose of giving admission to professional courses was announced for the first time last year, but the same was held ultimately this year as per the schedule announced in the above Circulars. The said tests were held on 30th April, 2005 and 2nd May, 2005. So far as the aptitude test for B. Arch. is concerned, it was held on 9th May, 2005. The present petition was filed on 11th April, 2005. As no interim stay was granted, not only the GCET was held as per the schedule announced by the Government, but the results not only of the GCET but also of the qualifying examinations are already out. The results of the GCET were declared on 1st June, 2005, while that of the 12th Standard were declared on 6th June, 2005. Since the

results of the two qualifying examinations as well as the GCET were declared before the hearing commenced in this petition, some students had intervened on either side and, as the decision in this petition was likely to affect one way or the other the intervenors, we had allowed the students to intervene in the petition and gave full hearing to the intervenors as well.

3. While issuing the impugned Circular of 4th April, 2005, it is stated that in view of the judgments of the Apex Court, the Circulars and Directives issued by Medical Council of India ("MCI" for short), University Grants Commission ("UGC" for short) and All India Council for Technical Education ("AICTE" for short), it had become mandatory for all states to conduct Common Entrance Test for admission to professional and technical degree courses and, therefore, the Government of Goa shall hold Common Entrance Test for admission to the First Year Degree Courses in Medicine, Dentistry, Engineering and Pharmacy in the various colleges of Goa. It was further stated in the said Circular that subsequent to the judgment of the Apex Court delivered in the case of ***Mridul Dhar*** (supra) on 12th January, 2005, the Government

had obtained legal advice and felt that it had no alternative but to assign100% weightage to the marks scored in the relevant subjects of the GCET 2005, for preparing merit list for admission to the various professional degree courses, like MBBS, BDS, B.Arch. and B. Pharm., etc. In reply to the petition, the Government has filed affidavit in which also the stand taken is that as per the decision of the Apex Court in the case of ***Mridul Dhar*** (supra) there was a mandate that the merit list should be prepared only on the basis of the marks obtained at the GCET, which is controverted and has been subject of attack on behalf of the petitioners.

4. The judgment of the Apex Court in ***Mridul Dhar's*** case (supra), was delivered on 12th January, 2005, i.e. the date on which the first Circular was issued by the Goa Government announcing that weightage of 25% would be given to the marks obtained at the GCET on which date the Government obviously was not aware as to the mandate given by the Supreme Court in that case. Thereafter, advice was obtained and finding that there was no alternative but to prepare the merit list only on the basis of the GCET, the impugned Circular of 4th April, 2005, was issued, superseding the earlier Circular dated 12th January, 2005, in

respect of weightage to be given to the two examinations. We were extensively taken through the judgment of the Apex Court in the case of ***Mridul Dhar*** (supra). However, we find that the Apex Court was only considering the effective utilization of 15% quota allotted to the all India medical and dental students and the observations made in that judgment pertain to the utilization of the quota on all India basis. Reference was also made extensively to the judgment of the Apex Court in the case of ***Islamic Academy of Education & Anr. vs. State of Karnataka & Ors.***, ([2003]6 SCC 697), where a Five Judge Bench of the Apex Court was constituted to clarify the judgment of the Apex Court delivered by an Eleven Judge Bench of the Apex Court on 31st October, 2002, in the case of ***T.M.A. Pai Foundation vs. State of Karnataka*** , ([2002] 8 SCC 481). In those cases the Apex Court was concerned about the admissions to be given by private professional colleges not getting grant-in-aid from the Government and also by the minority institutions. None the less, the Apex Court has made observations that wherever the qualifying examinations are held by more than one agency, the admission to the professional colleges should be given on the basis of merit achieved at the Common Entrance

Test. Then it was laid down that either the Common Entrance Test should be held by the concerned State Government or by the Association of Colleges. The emphasis laid down by the Apex Court was that the admissions for professional courses should be on the basis of merits assessed at an examination where uniform standard is observed for the assessment of the merits of the students .

5. So far as this State is concerned, though there is only one Board holding High Secondary School Certificate Examination for the 12th Standard students and most of the students from this State who seek admission for the professional courses had appeared for the Higher Secondary School Certificate Examination held by the one Board, at least 2% of the students appeared for examinations held by the Central Board of Secondary Education (CBSE) and the Indian Council of Secondary Education (ICSE) and, accordingly the petitioners' counsel did not contest the position that in Goa also, the need to hold Common Entrance Test would be necessary in view of the rules and regulations made by the MCI and AICTE. During the course of the arguments, Mr.

Nadkarni, learned counsel appearing for the petitioners, also did not contest the position that when GCET is held the list of merit for the purpose of giving admission to the professional courses should be prepared on the basis of the GCET alone, i.e. by giving 100% weightage to the results of the GCET, but his only grievance is that the weightage to be given should not have been changed/increased from 25% to 100% to the marks obtained at the GCET after having made announcement on 12th January, 2005, that only 25% weightage would be given by the Government for preparing the merit list for admission to professional courses.

6. So far as the admission to professional courses is concerned, the power vests in the MCI under Section 33 of the Medical Council Act, 1956, pursuant to which power the Medical Council of India Regulations On Graduate Medical Education, 1997, ("Regulations" for short), were made and Rules have been framed. We are concerned with Rules 4 and 5 of the Regulations. Rule 4 lays down the the eligibility criteria for admission to medical courses and states that in order to be qualified for getting admission to the medical courses, the students must have passed

the High Secondary Examination and Indian School Certificate Examination. Rule 5 pertaining to selection of students lays down as under:-

> **5. Selection of Students:** The selection of students to medical college shall be based solely on merit of the candidate and for determination of merit, the following criteria be adopted uniformly throughout the country:
>
> (1) In states, having only one Medical College and one university/board/examining body conducting the qualifying examination, the marks obtained at such qualifying examination may be taken into consideration;
>
> (2) In states, having more than one university/board/examining body conducting the qualifying examination (or where there is more than one medical college under the administrative control of one authority) a competitive entrance examination should be held so as to achieve a uniform evaluation as there may be a variation of standard at qualifying examination conducted by different agencies;
>
> (3) Where there are more than one college in

a state and only one university/board conducting the qualifying examination, then a joint selection board be constituted for all the colleges;

(4) A competitive entrance examination is absolutely necessary in the cases of Institutions of All India character;

(5) Procedure for selection of M.B.B.S. course be as follows:-

(i) In case of admission on the basis of qualifying examination under clause (1) based on merit, a candidate for admission to M.B.B.S. course must have passed in subjects of Physics, Chemistry, Biology & English individually and must have obtained a minimum of 50% marks taken together in Physics, Chemistry and Biology at the qualifying examination as mentioned in Clause (2) of regulation 4. In respect of candidates belonging to Scheduled Castes, Scheduled Tribes or Other Backward Classes, the marks obtained in Physics, Chemistry and Biology taken together in qualifying examination be 40% instead of 50% as above.

(ii) In case of admission on the basis of competitive entrance examination under

clauses (2) to (4) of this regulation a candidate must have passed in the subjects of Physics, Chemistry, Biology and English individually and must have obtained a minimum of 50% marks taken together in Physics, Chemistry and Biology at the qualifying examination as mentioned in clause (2) of regulation 4 and in addition must have come in the merit list prepared as a result of such competitive entrance examination by securing not less than 50% marks in Physics, Chemistry and Biology taken together in the competitive examination. In respect of candidates belonging to Scheduled Castes, Scheduled Tribes or Other Backward Classes the marks obtained in Physics, Chemistry and Biology taken together in qualifying examination and competitive entrance examination be 40% instead of 50% as stated above.

Provided that a candidate who has appeared in the qualifying examination the result of which has not been declared, he may be provisionally permitted to take up the competitive entrance examination and in case of selection for admission to the M.B.B.S. course, he shall not be admitted to

that course until he fulfils the eligibility criteria under regulation 4.

Sub-rule (2) of Rule 5 makes it clear that in states having more than one Board a competitive entrance examination should be held so as to achieve a uniform evaluation as there may be variation of standards at qualifying examinations conducted by different agencies. Thus, wherever there is one Board conducting qualifying examination holding of competitive entrance examination is not necessary. Secondly, it has laid down that at least 50% marks must have been obtained at the qualifying examination in subjects like Physics, Chemistry and Biology taken together, so also in the competitive examination. Under Section 10 of the AICTE Act, rules have been framed whereby the admission to engineering courses has to be given on the basis of the merits obtained at the Common Entrance Test. The only difference is that for the engineering course, the student is not required to obtain minimum 50% marks in the competitive examination in the subjects of Maths, Physics and Chemistry. On the basis of these Rules the Government of Goa like other Governments had received directives from MCI, UGC and AICTE, that they must conduct Common Entrance Test for

admission to professional medical and technical courses. The Apex Court also held that it is necessary to hold Common Entrance Test for the purpose of giving admission to the medical and engineering courses on the basis of the aforesaid Rules, considering the importance of holding Common Entrance Test for the proper assessment of merits of the students aspiring to get admission for professional courses at an examination held on uniform basis. In the case of ***Islamic Academy of Education,*** (supra), it was held by the Apex Court that either the admission should be given on the basis of Common Entrance Test conducted by the State or on the basis of the Common Entrance Test conducted by Association of all colleges of that type in the State.

7. On behalf of the respondents the decision of the Apex Court in the case of ***Ravindra Kumar Rai vs. State of Maharahstra & Ors.***, ([1998] 3 SCC 183) was pressed in service. That was a case where a student had filed a writ petition under Article 32 of the Constitution of India before the Apex Court seeking direction against the Government of Maharashtra for holding Common Entrance Test as per Regulation 5(2) made by the MCI.

Quoting a passage from the judgment of the Apex Court in the case of ***Shri Chander Chinar Bada Akhara Udasin Society vs. State of J. & K. ,*** ([1996] 5 SCC 732), about the need for Common Entrance Test, the Apex Court had issued direction to the State of Maharashtra for holding the Common Entrance Test for admission to Medical Colleges in Maharashtra for the year 1998 and conducting the said examination in accordance with the Regulations made by the MCI.

8. On behalf of the intervenors, reliance was also placed on the case of ***Dr. Preeti Srivastava & Anr. vs. State of M.P. & Ors.*** , ([1999] 7 SCC 120), wherein it was held by the Apex Court that the scheme of the Indian Medical Council Act, 1956, does not give an option to the Universities to follow or not to follow the standards laid down by the MCI. Reliance was also placed on the earlier judgment of the Apex Court in the case of ***Medical Council of India vs. State of Karnataka*** , ([1998] 6 SCC 131), in which it was held that the MCI Regulations have a statutory force and are mandatory. It was also held that whether the lower minimum qualifying marks for the reserved category could be

prescribed at the post graduate level of medical education for the reserved seats must be decided by the MCI and not by any other authority. Thus, the emphasis is laid so far as the criteria for giving admission to the medical courses is concerned on the Rules framed by the MCI and it was held that no other authority can decide the criteria for giving admission for the medical courses. In the case of ***Harish Verma & Ors. vs. Ajay Srisvatava & Anr.***, ([2003] 8 SCC 69), while dealing with the admission to medical colleges, and in particular admission to postgraduate courses in medical colleges, it was held by the Apex Court that the Regulations have statutory force and are mandatory, relying upon the Constitution Bench judgment of the Apex Court in the case of ***Dr. Preeti Srivastava*** (supra).

9. Reading Rule 5 of the Regulations leaves no doubt that the admission for the First Year of the MBBS course has to be given on the basis of the merit assessed at the Common Entrance Test. Rule 5 starts with the words "the selection of students to medical college shall be based solely on merit of the candidate and for determination of merit" the criteria laid down in

the different clauses of the said Rule "shall be adopted uniformly throughout the country". A similar provision is made in the Rules framed by the AICTE under Section 10 of the AICTE Act. Rule 5 of the Regulations framed by the MCI had been subject of discussion in various judgments of the Apex Court. The view expressed by a Constitution Bench of the Apex Court in the case of ***Dr. Preeti Srivastava*** (supra), leaves no doubt that the above Regulations have statutory force and are mandatory and that the scheme of the Indian Medical Council Act, 1956, does not give any option to the University to follow or not to follow the standards laid down by the MCI and the contrary view expressed by the Three Judge Bench of the Apex Court in the case of ***Ajay Kumar Singh vs. State of Bihar***, ([1994] 4 SCC 401), had been expressly overruled. Similarly, the Constitution Bench had not agreed with the view expressed by the Apex Court in the case of ***State of Madhya Pradesh vs. Nivedita Jain***, ([1981] 4 SCC 296) that the provisions of the Indian Medical Council Act and the Regulations framed for under-graduate medical courses under Regulation II were only recommendatory, which need not be followed. Similar view was taken by a Three Judge Bench of the Apex Court in the case of

Medical Council of India vs. State of Karnataka (supra), in which disagreeing with the view expressed in the case of ***Ajay Kumar Singh*** (supra), it was held that the Regulations had statutory force and are mandatory. In paragraph 57 of the Apex Court judgment in the case of ***Dr. Preeti Srivastava*** (supra), the Constitution Bench observed that under the Indian Medical Council Act, there is an overall vigilance by the MCI to prevent sub-standard entrance qualification for medical courses. Clause (2) of Rule 5 of the Regulations enacted by the MCI reads as follows:-

> "(2) In states, having more than one university/board/examining body conducting the qualifying examination (or where there is more than one medical college under the administrative control of one authority) a competitive entrance examination should be held so as to achieve a uniform evaluation as there may be a variation of standard at qualifying examination conducted by different agencies;" (underlining supplied)

The aforesaid provision makes it abundantly clear that wherever the qualifying examinations are held by more than one Board or where there is more than one Medical College under the administrative control of one authority, a competitive entrance

examination should be held so as to achieve a uniform valuation as there may be variation in the standards at qualifying examinations conducted by different agencies. Rule 5 of the Regulations also lays down that the list has to be prepared as a result of the competitive entrance examination.

10. Considering the rules framed by AICTE under the All India Council for Technical Education Act, 1987, with regard to the admissions for the engineering faculty, it was held by the Apex Court in the case of ***State of Tamil Nadu & Anr. vs. Adhiyaman Educational & Research Institute & Ors.*** ([1995] 4 SCC 104), that to the extent that the state legislation is in conflict with the central legislation though the former is purported to have been made under Entry 25 of the Concurrent List, in effect it encroaches upon legislation including subordinate legislation made by the Centre under Entry 25 of the Concurrent List or to give effect to Entry 66 of the Union List, it would be void and inoperative.

11. Reference may also be made to the judgment of

the Apex Court in the case of ***Ravindra Kumar Rai vs. State of Maharashtra & Ors.*** (supra), where it was held that the contention made on behalf of the State that candidates from CBSC Board are smaller in number did not make any difference and the Common Entrance Test was required to be held under Rule 5 of the Regulations, since there were three Boards in the State. That was a case where the State of Maharashtra was directed to hold Common Entrance Test as mandated by Rule 5 made by the MCI in a writ petition filed by a student under Article 32 of the Constitution in the Apex Court.

12. From the aforesaid discussion as regards the requirement to hold a Common Entrance Test for the purpose of assessing the merits for giving admission to the professional courses is concerned, there can be no doubt that whenever in a State more than one Board or agencies conduct qualifying examinations, the holding of Common Entrance Test is mandatory and the admission will be given to the professional courses like medicine, engineering, etc. on the basis of the merits assessed at the Common Entrance Test alone. That position though challenged

in the petition, was not made an issue by the counsel for the petitioner across the Bar, albeit the written submissions made on behalf of the petitioners again raised the contention that in Goa there is only one Board conducting Higher Secondary School Certificate Examination and most of the professional colleges belong to the State Government and the holding of the Common Entrance Test is not very essential as only 2% of the candidates appear for the qualifying examinations conducted by the ISCE and CBSE.

13. So far as the State Government is concerned, initially Mr. D'Costa, the then Advocate General, appeared on behalf of the State when the hearing in the petition began. He tried to support the Circular dated 4th April, 2005 issued by the Government whereby it was made clear that 100% weightage will be given to the marks obtained by the candidates at the CET examination held by the State Government. After the appointment of Mr. Kantak as Advocate General of the State when the new Government was formed, he appeared in the matter. He submitted that the petitioners have not and cannot challenge that Government cannot go by GCET, but they have only challenged the

weightage to be given to the marks obtained at the GCET. He further submitted that there is no change in the policy of the Government, but only the admission rules have been changed, though surprisingly he also stated that it is difficult to support the Circular issued on 4th April, 2005. Ultimately, both the Advocate Generals, Mr. D'Costa as well as Mr. Kantak stated that they would abide by the Court's verdict in this petition.

14. Though the Regulations were framed by the Medical Council in the year 1997 and amended in the year 1999, which were held to be mandatory by the Apex Court by the judgments in the years 1998 and 1999, the State Government had not held GCET in the previous years. The first time when the Government had announced holding GCET was in the year 2004, but that move on the part of the Government was challenged by a petition filed in this Court in which an order was passed that since announcement was not made about the holding of GCET sufficiently in advance, prejudice would be caused to the students in their preparation for GCET and, therefore, virtually by consent an Order was obtained from the Court that GCET would not be

held for the year 2004, but it would be held from the year 2005 onwards. The reluctance on the part of the Government to hold GCET is further obvious from the fact that we were told time and again across the Bar that a petition has been filed by the Government of Goa in the Apex Court seeking exemption from holding GCET. That petition is said to have been filed in December, 2004, but no orders have been obtained either interim or final in that petition. Then on 12th January, 2005, the Government issued a Circular announcing its programme to hold GCET giving the dates and laying down the criterion that only 25% weightage would be given to the marks obtained in the GCET and 75% weightage would be given to the marks obtained at the qualifying examinations. Realizing the error committed by the Government in announcing that only 25% weightage would be given to the examination held by the GCET another Circular was issued on 4th April, 2005, announcing that 100% weightage would be given to the marks obtained at the GCET which was in accord with the Regulations made by the MCI and AICTE. The submission made by the learned Advocate General Mr. Kantak that he cannot support the advertisement of 4th April, 2005, is in line

and accord with the attitude of the Government of Goa, which had announced holding of GCET reluctantly.

15. Mr. Nadkarni argued that so far Common Entrance Test is not held in the State of Goa and since it is going to be held for the first time, sufficient notice ought to have been given for giving 100% weightage to the marks obtained at GCET. His first main contention is that prejudice was caused to the students because the Government made last minute change in the weightage to be given to the marks obtained at GCET. The two examinations, i.e. the qualifying examination and the GCET are altogether of different types and if the students had known that 100% weightage was to be given to the marks obtained at GCET, they would have started preparation for the GCET from January itself. Since in January, 2005, the Government had announced that only 25% weightage would be given to the marks obtained at the GCET, the students concentrated on preparation for the qualifying Higher Secondary School Certificate Examination ("HSSCE" for short). We do not think that prejudice would be caused to the petitioners alone or to some of the students only. If at all any prejudice had

been caused it would be caused to all the students uniformly who appeared for the HSSCE as well as GCET and not to few of them only. Moreover, the holding of GCET was announced as far back as 12th January 2005, and significantly the syllabus for the examinations was common. In this connection reliance was placed on behalf of the petitioners on the judgment of the Full Bench of this Court in the case of ***Ashwin Prafulla Pimpalwar vs. State of Maharastra*** , (1991 Mh.L.J. 1336), in which the Full Bench had approved the view expressed by one of the members of the Full Bench, namely P.D. Desai, C.J., in the case of ***Kumari Jayashree Chandrachud Dixit vs. State*** , ([1979] XX Guj. L.R. 614). In the latter case it was held that though the State Government has every right to frame rules regulating admission to Government colleges based on certain rational policy and amend them, if occasion arises, to remove any defect or lacuna, it would be always desirable to formulate and finalize such rules with precision well in advance and to make rules relating to admission known to the intending applicants at a point of time reasonably anterior to the last date of admission. Justice Sukumaran, as he then was, after quoting a passage from the judgment of Chief Justice Desai, who was one of

the members of the Full Bench, delivered from Gujarat High Court, observed that the Bench had their full approval, of the view that it is desirable that State Government makes rules well in advance. But that was held only to be desirable and not followed by Full Bench itself, because the contention raised on behalf of the students before the Full Bench with regard to the advance notice was rejected by the Full Bench expressly and in emphatic tone. Dealing with the question whether any change can be made to the prospectus once issued by the Government, it was observed by the Full Bench inter alia in paragraph 32 of the judgment as under:-

> "Students entering educational institution with the ultimate aim of completing their scholastic career at the peak are expected to strive for academic excellence, and accordingly, it cannot be assumed that a student would only look at a GR operating at or about the time when he intensifies the preparation for the qualifying examination and regulating admission to post-graduate courses. Then again, a student is indeed expected to do his best throughout his scholastic career. The heights are reached not by a sudden flight. They are reached by

> those who toil upwards in the night while their companion slept. (The borrowing from the lines of Longfellow is acknowledged). In a highly competitive examination there is a neck to neck race even among those who spare no pains or times to achieve the coveted goal. Quite often, imponderable factors or fortuitous circumstances may affect the fate. Under such circumstances, it would be unrealistic to posit a theory of promissory estoppel based on the elusive concept of the preparation time for the qualifying examination."

We fully approve and endorse the aforesaid observations of the Full Bench.

16. So far as the present petition is concerned, it cannot be forgotten that not only GCET was held, but also qualifying examination and the results of both the examinations are already declared. As stated above, GCET results were declared on 1st June, 2005, while HSSCE Board had declared results on 6th June, 2005, when the Circular of 4th April, 2005, was still in force as the interim order was not granted by this Court, nor by the Apex Court, when the petitioners approached that Court even before the

results were out. Moreover, the Circular of 4th April, 2005, was issued in advance immediately after qualifying examination which was over on 30th March, 2005, and four weeks before the GCET was held on 30th April, 2005. The students could have started preparation for GCET only after finishing the qualifying examination.

17. Now, the question is when the results of both the qualifying examination as well as the competitive examination are out can the claim of the students who have excelled at the competitive examination be adversely allowed to be affected by passing any order detrimental to their interest? Due to the declaration of the results there is now clear demarcation among the students as to who would get the admission to professional courses, when the Circular of 12th January, 2005, is made applicable or when the Circular of 4th April, 2005, is followed. It was for this reason that some students, naturally those who had obtained higher marks in the competitive examination, have intervened in this petition. Intervenor no.1 by Misc. Civil Application No.366 of 2005 had applied for her impleadment as a

party-respondent in the petition. We had only allowed her to intervene and also to file reply affidavit as the arguments had already commenced on that day when she made the application, on 7th June, 2005. Since the students also knew the marks obtained by them in the respective qualifying as well as competitive examinations, we wanted to know what was the position about the merit list if prepared on three different criteria, i.e. giving weightage of 25% as per Circular of 12th January, 2005 and giving 100% weightage to the GCET as per the Circular of 4th April, 2005, and also what was the position in case 50% - 50% weightage was given to the marks obtained in both the examinations. The learned Advocate General, Mr. Kantak, had made available to us some tentative figures. While the petitioner no.1 has obtained high marks in both the examinations and is in a position to get admission for the professional courses as per her first choice in all the three categories, the intervenor no.3, is stated to have ranked at serial no. 14 if 100% weightage is given to the marks obtained in the GCET, but may not get admission for the professional course of her choice if only 25% weightage is given. Even by giving 50% weightage she would not get the admission to the course of her first

choice, i.e. medicine. We, therefore, had to hear the petition fully where the legal position was argued threadbare on either side, and we must say, with great competence. Arguments were advanced extensively by Mr. Kakodkar on behalf of the intervenor no.1 who is stated to have ranked at serial no.14 in the tentative merit list prepared on the basis of the 4th April, 2005, Circular.

18. Mr. Kakodkar, the learned Senior Counsel appearing for the intervenor no.1 firstly brought to our notice the method of holding the GCET and tried to impress upon us that the examination held by the GCET is purely objective, where there is no possibility of subjective element entering, which would not assess the true merits of the students. Firstly, it was pointed out that the syllabus for the GCET was the same which the students had to study for their qualifying examination and, therefore, it was argued that since there was no change in the syllabus the students had to study the same syllabus for both examinations and, therefore, there was no question of any prejudice being caused to the entire student community. Secondly, as stated earlier, the notice, adequate or inadequate, was given to all the students at the

same time. It is not that some students who excelled at the GCET had received the notice or intimation about weightage of 100% being given to it earlier than the petitioners and some other students. Then, it was pointed out that objective type of questions only were asked at the GCET and there were four options given, out of which one option was correct. The students had to tick the correct answer. In order to ensure elimination of copying among the students, though the same questions were asked to all the students, the numbering of the questions differed from student to student. The answer books were later on put into computers which assessed and evaluated the marks as per the correctness of the answers given, which ensured that no human element or subjective element had entered while assessing the answer papers. First of all the examiners were not human beings and secondly, the questions being of objective type there would not be any error in the assessment or evaluation of the answer papers, which was done by computer. There was no chance of inadvertent or deliberate alteration in the marks or improper assessment of the answer papers, since the answer papers had to be put into computers which gave the marks instantaneously. The question, therefore, is,

having held the GCET where assessment of merits is done absolutely objectively, without chance of human error entering and when the results are already out and the students know their merits, can we still change the criterion of merit that is laid down under Rule 5 of the Regulations which is held to be mandatory by the Apex Court whereby the uniform pattern of assessment or evaluation on merit is achieved for the professional courses where the seats are limited? The question is should those limited seats be not made available to the best of the students who had to face same questions with the same notice given on 4th April, 2005 ?

19. Mr. Kakodkar, the learned counsel for the intervenor no.1 then submitted that there was no change in rule effected by the State Government after pointing out that the field is undoubtedly and clearly governed by the rules made under Section 33 of the IMC Act and Section 10 of the AICTE Act. It is then submitted that the Government had only corrected the Circular of 12th January, 2005, which was wrongly issued, not at the last moment or after the examination, but almost four weeks in advance before holding of the GCET, after it realized that the

Circular of 12th January, 2005, was in clear contravention of Rules and the Regulations, which are mandatory. It is not in dispute that the HSSCE was held between 16th March and 30th March, 2005. Four days thereafter the impugned Circular was issued correcting the earlier Circular, when the GCET was yet to be held, almost after a period of four weeks, i.e. on 30th April and 2nd May, 2005. Normally, the students would concentrate on preparation for the GCET after finishing the qualifying examination. In between only four days had elapsed. Learned counsel for the intervenor no.1 relied on a number of judgments of the Apex Court holding that there cannot be promissory estoppel against the Government, though the counsel for the petitioner had made it clear that he is not challenging the Circular of 4th April, 2005, on the ground of promissory estoppel. But whether it is challenged on that ground or not it would be desirable for the court to consider that aspect. We are sitting in an extraordinary writ jurisdiction to consider the petition where it is desirable to consider various aspects of the case and in that view of the matter, though the challenge is not based on the ground of promissory estoppel against the Government to amend its earlier Circular, we feel it

desirable to consider this aspect as well.

20. Before considering this aspect, we may deal with the first objection raised on behalf of the intervenor saying that all those students who are likely to be affected by quashing the Circular of 4th April, 2005, ought to be impleaded either individually or in their representative capacity. In that respect reliance was placed on the judgment of the Apex Court in the case of ***Prabodh Verma & Ors. vs. State of Uttar Pradesh & Ors.***, ([1984] 4 SCC 251), in which it is held that the High Court ought not to decide a writ petition under Article 226 of the Constitution of India when the persons who would be vitally affected by its judgment, being before it as respondents or at least by some others being before it as respondents in a representative capacity if their number is too large, are not joined as respondents individually. In this case also such number may not be that small but since due to the exigency of time and the urgency with which this petition is required to be disposed of, it was not possible to insist on the petitioners joining all the respondents who are likely to be affected. We expect that those who would be vitally affected would have tried

to seek their impleadment in this petition as is done by the intervenors. But in any case, we will have to bear in mind that no order should be passed in this petition which would vitally and adversely affect the students who, otherwise, stand in the merit list prepared in the competitive examination. It was with this objective in our mind that we had requested the learned Advocate General to furnish us some tentative details about the students who are likely to get admission for the professional courses on the application of either of the Circulars of 12th January and 4th April, 2005.

21. In this respect Mr. Kakodkar also cited the decision of the Apex Court in the case of ***All India SC & ST Employees' Association & Anr. vs. A. Arthur Jeen & Ors.***, ([2001] 6 SCC 380), taking the same view as in the above case of ***Prabodh Verma & Ors. vs. State of U.P & Ors.***

22. Another main contention raised on behalf of the intervenor no.1 is that there cannot be promissory estoppel against a State. In that respect firstly reliance was placed on the decision of a Three Judge Bench of the Apex Court in the case of ***Sharma***

Transport represented by D.P. Sharma vs. Government of A.P. & Ors., ([2002] 2 SCC 188). In paragraph 24 of the said judgment it was observed as follows:-

> "24. It is equally settled law that the promissory estoppel cannot be used to compel the Government or a public authority to carry out a representation or promise which is prohibited by law or which was devoid of the authority or power of the officer of the Government or the public authority to make. Doctrine of promissory estoppel being an equitable doctrine, it must yield place to the equity, if larger public interest so requires, and if it can be shown by the Government or public authority for having regard to the facts as they have transpired that it would be inequitable to hold the Government or public authority to the promise or representation made by it."

23. Similarly, in the case of ***Hira Tikkoo vs. Union Territory, Chandigarh & Ors.***, ([2004] 6 SCC 765), it was held that overriding public interest outweighs the obligation of a promise or representation made on behalf of the administration. In

that case the Apex Court quoted with approval the observations of the Apex Court in the case of ***Jit Ram Shiv Kumar vs. State of Haryana*** , ([1981] 1 SCC 11), wherein it was observed that the doctrine of promissory estoppel cannot be invoked for preventing the Government from acting in discharge of its duty under law. It was further held that in order to protect larger public interest, the legal maxim can be invoked in aid, which is to the following effect : ***"Lex non cogit ad impossibilia"*** i.e, the law does not compel a man to do that which he cannot possibly perform. The decision of the Apex Court in the case of ***Dr. Ashok Kumar Maheshwari vs. State of U.P. & Anr.*** , ([1998] 2 SCC 502), is also relevant, wherein it was held that the plea of estoppel cannot be raised to defeat the provision of a statute. Similarly, in the case of ***Pune Municpal Corporation & Anr. vs. Promoters and Builders Association & Anr.*** , ([2004] 10 SCC 796), it was held that it is settled position of law that there could be no promissory estoppel against a statute.

24. As against this, Mr. Nadkarni brought to our notice the judgment of the Apex Court in the case of ***Assistant Commissioner of Commercial Taxes (Asst.) Dharwar & Ors. vs.***

Dharmendra Trading Company & Ors., ([1988] 3 SCC 570), dealing with the doctrine of promissory estoppel. In that case tax exemption was given by way of incentive to new industries in the State by the order of the State Government, but the exemption was curtailed by a subsequent order. In that circumstance, a Two Judge Bench of the Apex Court had held that the Government was bound by the doctrine of promissory estoppel not to go back on the assurance of exemption granted by its initial order, who acting upon the same had set up new industries during the period between the dates of commencement of the first order and its supersession by the second order. As the facts of that case reveal, the doctrine of promissory estoppel had to operate against the Government when the industry had already acted on the basis of the earlier exemption granted by the Government, and, therefore, what was saved was the action of the industries taken during the period between the dates of commencement of the first order and its supersession by the second order. The ratio of that decision would not be applicable in the present case also because there was no question of defeating the provision of law.

25. Reliance was also placed on behalf of the

intervenor no.1 on the decision of the Apex Court in the case of ***Gadde Vekateshwara Rao vs. Government of Andhra Pradesh & Ors.***, (AIR 1966 SC 828), upholding the order of the High Court in not interfering in the discretion exercised by the Government and quashing the order of the Government dated 18th April, 1963. It was held by the Apex Court in paragraph 17 of the judgment as follows:-

> "If the High Court had quashed the said order, it would have restored an illegal order - it would have given the Health Centre to a village contrary to the valid resolutions passed by the Panchayat Samithi. The High Court, therefore, in our view, rightly refused to exercise its extraordinary discretionary power in the circumstances of the case."

26. Reliance was then placed on the judgment of the Three Judge Bench of the Apex Court in the case of ***A.P. Christians Medical Educational Society vs. Government of Andhra Pradesh & Anr.***, (AIR 1986 SC 1490). That was a case where the interests of the students admitted to the MBBS course had to be protected when it was found that the institution itself

was not legally constituted. The counsel for the students therefore pleaded before the Apex Court that the interest of the students should not be sacrificed because of the conduct or folly of the management and they should be permitted to appear at the University examination notwithstanding the circumstance that permission and affiliation had not been granted to the institution. The counsel suggested to the Apex Court to issue appropriate directions to the University to protect the interest of the students, but the Apex Court reacted as follows:-

> "We do not think that we can possibly accede to the request made by Shri Venugopal on behalf of the students. Any direction of the nature sought by Shri Venugopal would be in clear transgression of the provisions of the University Act and the regulations of the University. We cannot by our fiat direct the University to disobey the statute to which it owes its existence and the regulations made by the University itself. We cannot imagine anything more destructive of the rule of law than a direction by the court to disobey the laws." (Emphasis supplied)

It was further observed that the Apex Court was unable to direct

the University to do something which it is forbidden from doing by the University Act and the regulations of the University.

27. In the present case also what we are asked to do is to direct the Government to do something which is not legal. Some judgments were cited in this regard, including the judgment of the Apex Court in the case of ***Ravindra Kumar Rai vs. State of Maharashtra & Ors.***, (supra), where though initially while delivering the judgment in the year 1998, the Apex Court did not consider that there was not enough time for the State of Maharashtra to hold the Common Entrance Test, ultimately when it was brought to its notice subsequently that there is a statutory rule requiring the Government to hold Common Entrance Test after giving six months' notice, the Apex Court exempted the State of Maharashtra from holding the Common Entrance Test for that year by modifying the earlier order. See the order in the case of ***State of Maharashtra & Ors. vs. Ravindra Kumar Rai***, ([1999] 2 SCC 48). It is important to note that though the application was made for review of the earlier order, the Apex Court observed that it was only modifying the earlier order in view of the practical difficulty in

holding the Common Entrance Test for that year after giving statutory notice of six months. Therefore, the directions given earlier on 27th February, 1998, were modified by the order dated 24th July, 1998, and the State of Maharashtra was directed to conduct Common Entrance Test from 1999 onwards. Secondly, it cannot be forgotten that in that case Common Entrance Test was yet to be held by Government of Maharashtra and the whole process would have delayed the conduct of the professional courses. In this case not only Common Entrance Test is held, but results are also declared in time.

28. It is then argued that though the mandatory regulations are in force since the year 1997, the Goa Government had not until this year held any Common Entrance Test and yet no action was taken by either the MCI or the AICTE. That is a different aspect altogether. If somebody had knocked the doors of the Court, undoubtedly there would have been a writ of mandamus issued against the State of Maharashtra, as was done in ***Ravindra Kumar Rai's*** case ([1998] 3 SCC 183). The examples of the State of Maharashtra as well as the State of Karnataka were also cited

before us stating that even last year also the Government of Maharashtra had not given 100% weightage, nor the State of Karnataka has given 100% weightage to the Common Entrance Test even this year. Merely because some States do not comply with those Regulations which are held to be mandatory that circumstance cannot legalize the action of this Government. When such actions are brought before the Court, no Court would uphold them as legal.

29. Before we deal with the main contention of the petitioners, about the last minute change effected by the Circular of 4th April, 2005, it would be better to deal with the submission made on behalf of the petitioners that there was non-application of mind on the part of the Government of Goa. While issuing the Circular of 4th April, 2005, there is a mention that the said action is taken in view of the judgment of the Apex Court in the case of ***Mridul Dhar*** (supra), which was delivered by the Apex Court on 12th January, 2005, on which day the first Circular was issued by the Goa Government and, therefore, the judgment of the Apex Court in ***Mridul Dhar's*** case (supra) was not available for

consideration by the Government of Goa. We have initially observed that the judgment in ***Mridul Dhar's*** case (supra), pertained to the 15% quota which was allotted on all India basis and the Apex Court was not interpreting the Regulations issued by MCI. The learned Advocate General Mr. Kantak had stated before us that the first Circular was also issued by the Government under the advice given to the Government, so also the second Circular of 4th April, 2005, was issued on the advice given to the Government.

30. Mr. Nadkarni also contended that when the State of Goa had not chosen to apply Rule 5 of the Regulations as it is, by its duly elected Government in January, 2005, how could the Governor of this State under President's rule, have issued the Circular of 4th April, 2005 ? This only shows that the Government of Goa was reluctant to hold GCET and after finding that it had no choice, applied to the Apex Court seeking exemption from holding GCET and when, for the first time, it introduced it by Circular of 12th January, 2005, it sought to give weightage to the extent of 25% only. We cannot understand what is the charm or logic in holding GCET and giving only 25% weightage when the

Regulations themselves, which are also upheld by the Apex Court, state that it is necessary to hold Common Entrance Test and assess the merits on the basis of the marks obtained at the Common Entrance Test in order to bring about uniformity. It cannot be gainsaid that the limited seats which are available for professional courses should be given to the best talents in the State. Maybe because on 4th April, 2005, there being President's rule the administration wanted to enforce the Rule 5 of the Regulations, which was mandatory, or may be that even the Governor that time was purely acting on the advice which was given to him. We cannot say that the advice given on 4th April, 2005, was wrong or the move of the Governor or the ruler of the State at that time, was wrong. On the contrary, the then Government was carrying out the mandate of law. Is it open for a legally elected Government of a State to by-pass the Regulations which have the force of a statute and are held to be mandatory by the Apex Court, not subsequently, but in the years 1998-1999, even by the Constitution Bench of the Apex Court? We do not think that a legally elected Government had a choice to make its own rules in contravention of the rules having statutory force which supersede any rules made by the

State, as they are made under the Concurrent List. As far back as in the year 1995, the Apex Court had occasion to consider the Regulations made under the Indian Council for Technical Education Act, 1987, in the case of ***State of Tamil Nadu vs. Adhiyama Educational & Research Institute & Ors.***, (supra). In Clause (ii) of paragraph 41 in the judgment the Apex Court has summarized as follows:-

> "(ii) To the extent that the State legislation is in conflict with the Central legislation though the former is purported to have been made under Entry 25 of the Concurrent List but in effect encroaches upon legislation including subordinate legislation made by the Centre under Entry 25 of the Concurrent List or to give effect to Entry 66 of the Union List, it would be void and inoperative."

In the present case there is no legislation, but only a Circular issued on 12th January, 2005, which, to use the phraseology of the Apex Court in the above case, "in effect encroaches upon legislation ..... made by the Centre under Entry 25 of the Concurrent List.....".

31. Relying on the judgment of the Full Bench of this Court in the case of ***Ashwin Prafulla Pimpalwar vs. State of Maharashtra*** , (supra), it was contended on behalf of the petitioners that there was non-application of mind on the part of the Government when the Circular of 4th April, 2005, was issued, relying on the judgment of the Apex Court in ***Mridul Dhar's*** case (supra). It is argued that it was a case of discretion which the then Government was exercising while issuing the Circular of 4th April, 2005, and we can quash the said Circular on the ground that there is non-application of mind. Maybe the Government did not properly rely on the judgment in the case of ***Mridul Dhar*** (supra) which was referred to even while issuing the Circular dated 17th March, 2005. Apart from ***Mridul Dhar's*** case reference was also made, in the Circular, to the directions issued by the UGC and AICTE and the judgments of the Apex Court in the case of ***Islamic Academy of Education & Anr. vs. State of Karnataka & Ors.*** , (supra) and also in the case of ***T.M.A. Pai Foundation vs. State of Karnataka*** , (supra). Unlike this case, the Government had option in the case of ***Ashwin Prafulla Pimpalwar vs. State of Maharashtra*** , (supra), and, therefore, the Full Bench of this Court

had quashed the Government Resolutions, in that case, not on the ground that the changes were effected at the last moment, but on the ground of non-application of mind. In the present case, Government has no choice but to apply the Regulations having the force of law and held to be mandatory by the Apex Court. The Circular of 4th April, 2005, itself states that the "Government has no alternative but to assign 100% weightage to marks scored in the .....GCET 2005".

32. Lastly, the petitioners had relied upon the judgment of the Division Bench of this Court in the case of ***Master Vasudeo @ Amey Subashchandra Kamat vs. State of Goa & Ors.*** (AIR 1997 Bom.114). In that case a direction was given to the State Government to publish the rules for admission to professional colleges for the academic year 1998-1999 by the end of January, 1998. It was further observed that once such rules/prospectus have been published before the end of January, 1998, there would be no change for the academic year commencing thereafter and the change, if any, should be published again before the end of January of the next year so as to operate from the academic year commencing thereafter. Relying on the last portion of that

judgment it was vehemently argued that there was a clear mandate/direction to the Government of Goa to publish the rules or issue prospectus before the end of January each year and thereafter no change should be effected for that year. It was argued that not to enforce that order or to make changes in derogation of that order, would amount to contravention of that order. We have also referred earlier to the observations of the Full Bench of this Court in the case of ***Ashwin Prafulla Pimpalwar*** , (supra), where the Full Bench had appreciated and approved the observations of the Gujarat High Court that no last minute changes should be effected and students put to any prejudice, but the Court had not granted relief on that ground. But when an order is passed in a writ petition, the Court has to consider various aspects of the matter. What is binding on a court of concurrent jurisdiction is the ratio of the decision, for which we have to see in what context and in what facts such direction was issued. In ***Master Vasudeo @ Amey Subashchandra Kamat's*** case (supra), the Government had changed the ratio of reservation which vitally affected all the students competing for open merit seats for admission to degree courses in Medical and Dental Colleges. It was announced after

the examinations were held. In that context the subsequent change announced by the Government was quashed. Undoubtedly, it was within the discretion of this Government to give reservations and, therefore, they were directed to announce those reservations well in advance. We are here dealing with an altogether different situation where the Government of Goa not having any discretion had earlier wrongly fixed the weightage of 25% only to the marks obtained at GCET, which was sought to be corrected not after the examination was over, but much before the examination was held and at an appropriate time which was ripe for the students to concentrate on the GCET. In the above case, considering the representations received by the Government, the Government had altered the ratio of reservations to the OBC category by increasing it from 9% to 15%, after the admission process had commenced and, therefore, it was held to be wholly arbitrary and therefore, quashed. In the present case we are dealing with a situation where the Government had tried to correct its earlier folly.

33. Reliance is also placed on other judgments of this Court in support of the contention about the last moment changes allegedly effected by the Government by Circular of 4th

April, 2005. In the case of ***Govinddas Mannulal Shroff & etc. vs. State of Maharashtra & Ors.***, (1997[1] All.M.R. 407), the rules whereby seats in the medical colleges in the entire State were sought to be distributed on the basis of the university-wise population were challenged. As the percentage of constitutional reservation was sought to be altered, the Full Bench had held that though the rules were not framed under Section 65 of the Maharashtra Universities Act, 1994, in the interests of the students it was necessary to publish the rules about the reservation of seats or make them known in advance, by following the intendment and spirit underlying Section 65 of the Act, which was a statutory recognition of well established principle that fair play requires that any major change in the admission should be announced to the students well in advance. Needless to say that the power which was sought to be exercised by the State Government had vested in the Government and there was no question of exercise of that power by the State Government in any way being in conflict with the central law.

34. Reliance was then placed on the judgment of

the Division Bench of this Court in the case of ***Prita Subodh Patgaonkar (Dr.) & Ors. vs. State of Maharashtra & Ors.***, (1991[2] Bom. C.R. 474). That was a case where in the short period of a year and a half between July, 1989 and January, 1991, the State Government had changed the merit criterion for admission to the post-graduate courses as many as four times. Each time changes had been made on ad-hoc basis without any rationale for the change, for the purpose of admission to the post-graduate courses in medicine. In that context, the Government Resolution making irrational changes from time-to-time on ad-hoc basis was held to affect vitally the students after they had appeared for the final MBBS examination. The earlier criterion for admission to the post-graduate courses was the total marks obtained in the final MBBS examination as set out in the Government Resolution dated 10th July, 1989 and the subsequent addendum dated 9th August, 1989 and the Government Resolution dated 6th January, 1990. Though in the addendum of 9th August, 1989, in addition to the total marks obtained in the final MBBS examination the Government Resolution had stated that additional admissions would be given to the students on the basis of their

subject-wise marks for admission to the post-graduate courses in January, 1991, that provision for additional admissions was retracted on 6th January, 1990 and once again the basis of total marks obtained at the final MBBS examination was restored for the January, 1991 batch. It is not that the State Government was acting beyond its powers in issuing those Government Resolutions and, therefore, the Division Bench held that the criterion for admission to the post-graduate courses should be declared in advance. This was much before the Rules of 1997 with which we are concerned in this petition, had come into existence.

35. Reliance was also placed on the judgment of another Division Bench of this Court in the case of ***Kush Damodar Jhunjhunwala vs. State of Maharashtra***, (1993 Mh.L.J. 292). That was a case where under the earlier rule a student was entitled to appear for some subjects and thereafter clear the remaining subjects, which facility was later on withdrawn because of which the petitioner had been put to prejudice and he would have lost his chance of getting admission to the medical courses. In that context, the Division Bench of this Court rightly

held that the subsequent withdrawal of the facility by the Government was arbitrary which adversely affected the students like the petitioner. It is not in dispute that grant of that facility was not beyond the powers of the State Government.

36. Since the subject-matter of this petition is altogether different and writ jurisdiction is essentially an equitable jurisdiction which has to be exercised sparingly in extraordinary circumstances, on the basis of the facts and circumstances as they obtain in a case, to remove injustice and advance the cause of justice, it cannot be said that the ratio of the aforesaid decisions strongly relied upon on behalf of the petitioners is binding in the facts and circumstances of the case with which we are concerned.

37. It was then argued that the challenge in this petition is made on the basis of the constitutional provision by invoking Article 14 which embodies a salutary principle of natural justice, that is no one can be condemned without hearing or giving sufficient notice to the parties. Apart from the principle of equality embodied in Article 14 of the Constitution, it is well-settled that the

Government action should not be made arbitrarily without giving hearing to the parties. But writ jurisdiction is not meant to direct a party to act in violation of law. The students were not taken by surprise when the Government had firstly taken the decision to hold GCET for admission to professional courses, nor the announcement made on 4th April, 2005, can be said to have taken the students by surprise by introducing some new rules which were not in existence earlier. If at all, it was the Circular of 12th January, 2005, which was issued in violation of the statutory law which was binding on the respondent Government and realizing that mistake the Government sought to correct it sufficiently in advance, not after the examinations were held as it happened in some of the cases which were cited before us, but at a time when the students would concentrate for preparing for the GCET just after qualifying examination was over. The argument that because the weightage of 75% - 25% was announced by the Circular of 12th January, 2005 and therefore students had concentrated more on HSSCE that time, was applicable to all the students, including the intervenors. After all, the merit has to be decided on the basis of comparative marks obtained by the students and finding that

the method and procedure of holding of GCET was more objective, which would enable assessment of the comparative merits of the students in the best possible manner, it cannot be said that prejudice would be caused to the petitioners and students like them. If there was any prejudice caused, it was caused to all the students, who had to give test for their comparative merits. It is not a case where some students were placed in a favourable position as against others and therefore it cannot be said that because of the impugned Circular any prejudice was caused to the petitioners. Merit list is prepared on the basis of comparative merit achieved by the students. As we understand from the tentative list produced by the learned Advocate General, petitioner no.1 has done extremely well in both the examinations and is likely to get admission for the professional course in any way. On the other hand, the intervenor no.1, who has otherwise stood very high in rank in the GCET would be adversely affected if the weightage of GCET is given to the extent of 25% only as wrongly and illegally announced earlier by the Government by the Circular of 12th January, 2005. By issuing the impugned Circular of 4th April, 2005, there is no contravention of any law and since writ

jurisdiction is essentially an equitable jurisdiction to be exercised sparingly and in extraordinary circumstances only, we cannot go to the extent of quashing the same and prejudice the interests of those who have achieved higher ranks in the GCET which is considered to be the real assessment of the merits of the students seeking admission to professional courses. The present position has arisen as it had happened last year only because the Government had not endeavoured to follow the statutory provisions which are mandatory.

38. In view of the above, we find no substance in the petition. It is high time that the State complies with the directions issued by the MCI and AICTE with regard to the giving of admission to professional courses. This would surely obviate the situation which arose in the cases of ***Master Vasudeo @ Amey Subashchandra Kamat vs. State of Goa,*** (supra), and ***Ashwin Prafulla Pimpalwar vs. State of Maharashtra*** , (supra), and the question of admission to professional courses will not generate the `annual spurt of litigation which has become a regular and recurring feature' for some years.

39. In the result we dismiss the petition. In the circumstances of the case there will be no order as to costs.

Issue of C.C. expedited.

S. S. PARKAR, J.

V. M. KANADE, J.

mc.